



## STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board  
Pete T. Cenarrusa, Secretary of State  
Alan G. Lance, Attorney General  
J. D. Williams, State Controller  
Marilyn Howard, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

### FINAL MINUTES SPECIAL LAND BOARD MEETING January 26, 1999 9:00 AM

The special meeting of the Idaho State Board of Land Commissioners was held on January 26, 1999, in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa  
Honorable Attorney General Alan G. Lance  
Honorable Controller J. D. Williams

Secretary Stanley F. Hamilton

The Honorable Superintendent of Public Instruction Marilyn Howard was absent from the meeting due to another commitment.

The meeting convened at 9:00 a.m. and adjourned at 11:45 a.m.

### **REGULAR AGENDA**

#### **1. Air Force Enhanced Training Range State land lease– Owyhee County, presented by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing**

Governor Kempthorne stated that he had been handed a paper from the Owyhee Canyonlands Coalition asking for a motion of disqualification. He stated that he had not had time to read all of the paper.

He said that he had received a letter prior to the paper that asked him to consider the aspect of recusing himself from participating in this discussion. As a result of that letter, the Governor asked the Attorney General if he would examine a conflict of interest to the Idaho Board of Land Commissioners meeting. Governor Kempthorne read a portion of the response from the Attorney General to him. The conclusion of the Attorney General's opinion, under this definition, conflict of interest exists only where there is a private pecuniary benefit to the public official or the official's family or business. Mr. Marvel made no allegation to recognize any private pecuniary benefit either to the Governor, his family or business interests. Nothing in the Governor's record as a U.S. Senator for Idaho indicates that any such private pecuniary benefit exists.

The Attorney General's letter went on to state that Governor Kempthorne's role in support of the Air Force Training Range was public and well known and the people of Idaho elected him as Governor. Therefore, the Governor's public role as a U.S. Senator, with respect to the training range, does not fall within the definition of conflict of interest and would not require the Governor to recuse himself from participation of the Land Board's consideration of these matters.

Governor Kempthorne stated that he did not intend to recuse himself from the deliberations and consideration of this issue. Attorney General Lance stated, on this issue, the law is well settled and the Governor has no obligation to recuse himself.

Ms. Caralee A. Lambert, Attorney on behalf of the Owyhee Canyonlands Coalition (OCC) asked to be recognized. Governor Kempthorne recognized her and informed her of the way the issue would proceed during the meeting. He stated that Director Hamilton would give an overview of the issue; Bryce Taylor would present the Idaho Department of Lands (IDL) report; Colonel Richey would present for the Air Force. At that time, others would be given the opportunity to speak. Governor Kempthorne stated that there would be a five (5) minute comment time.

Director Hamilton noted that Superintendent Howard had a conflict and would not be able to attend the Land Board meeting.

Director Hamilton stated that this issue is to consider the proposals from the United States Air Force and the Owyhee Canyonlands Coalition to lease 961.52 acres of state endowment land in eastern Owyhee County and also to provide the Land Board with the results of the auction for the lease.

Director Hamilton stated that it is also an audience that was requested with the Land Board by the Air Force after the auction occurred. The letter requesting that audience is attachment #10 provided with the memorandum.

Director Hamilton said that he had been presented with four items that he would like to acknowledge for the record. First is a letter from Jon Marvel to Director Hamilton. Attached to the letter is a letter to the Governor reiterating the item just covered. Second, there is a motion for disqualification, presented by the Owyhee Canyonlands Coalition. Third, there is a letter to the Idaho Board of Land Commissioners from Carl W. Rimbey, in support of the training range and Fourth, the comments of Colonel Richey. These items will become part of the record.

Director Hamilton introduced Bryce Taylor, Chief of the Bureau's leasing operation, who provided the Land Board with the background information on these proposals.

Mr. Taylor stated that the issue before the Land Board is to review proposals to lease 961.52 acres of public school endowment land in Owyhee County and to review the bids that were let at auction on January 22, 1999. The auction was between the United States Air Force and the Owyhee Canyonlands Coalition.

This issue was initially before the Board on December 15, 1998. No action was taken at that Board meeting because the Department had received notice at that time – both written and verbally – that the Owyhee Canyonlands Coalition would like to apply to lease the same parcels.

Two applications to lease the same land were received by the Department of Lands. The auction was held on January 22, 1999. Auction procedures were explained and time for questions was allowed. The auction began with the Air Force offering a bid of \$10.00. OCC bid \$5,000.00. No other bids were received and the auction was closed.

The lease terms proposed by the Air Force and contained in the auction notice are:

- To lease for one year with the lessee's right to renew each subsequent year for up to nine additional years;
- Renewal will be automatic unless 30 days written notice of an intention not to renew is given to the Idaho Department of Lands;
- The Air Force also indicated its current intention to apply for renewals of this lease, under applicable law, for the periods necessary to match the 25-year withdrawal of the surrounding BLM land from the public domain.

OCC proposes to lease the subject parcels under the same terms as proposed by the Air Force. The clarification of proposed terms that follow the discussion of the Air Force Proposed Terms apply here as well.

The Air Force has spent several years and many millions of dollars developing an advanced training range in conjunction with the area long served by the Saylor Creek Training Range.

The Air Force has been a lessee of the state for approximately 40 years. The enhanced training range has undergone exhaustive review and consideration by the federal government. The Air Force has indicated that they intend to use the subject site for a period of 25 years, although the term of the proposed lease is limited to a 10-year period under law.

OCC proposes to use the state parcel as a monitoring site to establish a baseline from which to compare noise levels and other parameters measured at other sites around the range. The OCC proposal was developed very recently, and its success would not appear to be dependent on location at this precise site. There is a 320-acre state-owned endowment parcel along the north boundary of the range. This half section borders, yet is outside of the range. The 320-acre parcel could easily provide the opportunity OCC seeks and not impact the configuration and operation of the range.

Mr. Taylor said that the Land Board has several items that need to be considered. These are public school endowment lands and the Board must examine both proposals and bids in light of maximizing revenue to the schools. The high bid was \$5,000 from OCC. The Air Force initiated the process consistent with their enhanced training project. The Board needs to consider that the overall potential income at \$8,500 + per year over a 25-year term would be about \$213,000. That is not taking into account the fact that these leases will be re-evaluated every five years and the rent would increase each five-year period. Historical income on this property is \$700 per year. The Air Force has had a long history of leasing with the state. The Air Force has indicated that they intend to invest \$30 million in the training range – not all of this will be on endowment land, but a small portion will be.

The OCC has indicated their opposition to the expansion of the enhanced training range.

Attorney General Lance asked Mr. Taylor if there was any interest in this land prior to the training range, other than for grazing purposes. Mr. Taylor said the Department's first indication that OCC had any interest in this lease was at the December 15, 1998 Land Board meeting. Attorney General Lance asked what was driving the market. Why are others other than the Air Force willing to pay \$8,500 per year for this lease? Mr. Taylor stated that he felt the driving force was the Air Force's proposal to use this as a training range. OCC has indicated, in writing on their web page and other places, that they oppose the training range. Attorney General Lance said it had been indicated that the Air Force intends to inject \$30 million in the local economy. How about OCC, are they going to inject \$30 million as well. Mr. Taylor stated that he could not speak to this. OCC did not indicate in their proposal that any cash would be expended.

State Controller Williams asked Mr. Taylor what the word "safety footprint" meant. Mr. Taylor said that was a term used by the Air Force and deferred to them.

State Controller Williams said he was interested in the fact that the Saylor Creek range was about 18 miles to the north-northwest of this area. He inquired as to how much the endowment was making off of Saylor Creek. This lease was renewed last April. He stated that the state makes about \$6,508 per year on 6,080 acres. He requested that this information be made part of the record.

Governor Kempthorne asked Mr. Taylor about the value of this lease. He reiterated that Mr. Taylor had said we were deriving about \$700 per year and we will now be receiving about \$8,500 per year. Mr. Taylor stated that it would be \$8,500 plus the \$700 or \$9,200 per year. The Governor asked if this amount was used to arrive at the \$213,000 over the 25 years. Mr. Taylor stated that the \$213,000 figure was based on the \$8,500. The \$700 per year or \$17,500 for 25 years would be in addition. The Governor asked Mr. Taylor if it were not for the enhanced training range, would anticipated proceeds to the endowment fund be \$17,500 over the next 25 years – with some market adjustments over time. Mr. Taylor stated that he felt this would more than likely be the case. This land has been out there for many years and has been leased for grazing for numerous years.

Governor Kempthorne called the next four individuals to speak in order – Colonel Richey, Caralee Lambert, Katie Fite and Dewey Bills. The individuals were allowed five minutes to speak.

Colonel Richey, representing the U.S. Air Force addressed the Board. He asked that the bid offered by OCC be rejected and that the land be leased to the Air Force. He stated that he felt this would be in the best interest to the state school endowment and the institutions to which the endowment lands have been granted.

This proposed state lease is an essential part of the ETI project. He stated that leasing the land to the Air Force is a good investment for the endowment. The Air Force is committed to a long-term financial relationship with the school endowment. This is clear from the long history of leasing endowment lands.

Mountain Home Air Force Base provides a large amount of money to public schools in Idaho. In Fiscal Year 1998, over 2.6 million dollars of federal funds were provided to local public schools for education, construction and capital improvements.

Additionally, nearly 165 million dollars are spent by approximately 10,000 military and civilian base personnel in local communities generating a large revenue from state sales tax, a portion of which goes to Idaho schools. Colonel Richey stated that many base personnel are state residents and pay state income tax, a percentage of which also goes to Idaho schools.

The Air Force has a large economic impact on the state of Idaho. Mountain Home AF spends more than 40 million dollars a year for construction and procurement contracts, much of which is paid to local firms. He also stated that military and civilian employees and their families spend most of their discretionary income locally.

Colonel Richey urged the Land Board to lease these lands to the Air Force as proposed in their application.

Attorney General Lance said it was his understanding of existing regulations of the U.S. Air Force that the Air Force is not at liberty to engage in this type of bidding process. Colonel Richey stated that it would be unfair for the taxpayers to go into a bidding war with the Air Force. Attorney General Lance said it was also his understanding that there would not be the appropriations to enter into a bidding war with anyone. Colonel Richey stated that was correct.

Secretary of State Cenarrusa said he would like to know something of the technology that would be utilized. Colonel Richey provided the technical information to the Land Board regarding the emitters that would be placed on the leased land. Secretary of State Cenarrusa asked if this would assist in air/ground support. Colonel Richey stated this was essential for realistic training. Colonel Richey said their training could be balanced against the environmental needs of the area. Secretary of State Cenarrusa asked if this could be used in combat. Colonel Richey said absolutely, the mobile emitters are simulating that they are the enemy in combat.

State Controller Williams asked about the term "safety footprint." Colonel Richey said if you have an analysis that is done for any kind of ordinance that you are going to drop from an airplane, the area where this is likely to drop is called the "safety footprint." This is strictly for safety and keeping people clear of this area.

State Controller Williams asked Colonel Richey what is the economic impact if the Air Force does not receive this lease. Why is this so critical to what the Air Force is doing here in Idaho and what effect may it have on the Air Force's presence in Idaho? Colonel Richey said that the state leases are a very integral part of making the enhanced training proposal work. It is required for the drop training range and necessary for the emitter sites to be spread out properly. He stated that the Air Force has gone through the withdrawal process, through Congress and the President and has the funds to execute ETI – construction funds for 1999 and the balance are programmed. ETI will provide the most modern training capability that the Air Force has for a local base to have in its back yard. This is a tremendous plus for keeping Air Force in Idaho – today and in the future.

State Controller Williams stated that part of what OCC has proposed with the monitoring appeals to him. He asked if there were any way there could be some compatibility – some cooperation with OCC and the Air Force. Colonel Richey said the Air Force was developing a formal, integrated natural resource plan as required by federal law and is working in conjunction with the BLM. There is a monitoring program that is being funded by the Air Force through

Idaho Fish and Game for bighorn sheep and sage grouse. He stated that he was aware that a lot of environmental groups were represented through BLM through community meetings.

Attorney General Lance confirmed with staff that the department has had a working relationship with the Air Force since 1962 on some of the broader portions of the training range. Mr. Taylor stated that was correct. Attorney General Lance asked how much money has this generated per year. Mr. Taylor said that the Saylor Creek lease currently rents for \$6,508 per year. This has increased over time. Attorney General Lance said it was his understanding that this lease is an annualized renewal situation --similar to the Saylor Creek lease. Mr. Taylor stated that the lease would be similar. Attorney General Lance stated that if the Saylor Creek training range could not be used effectively, they could terminate the lease. Mr. Taylor said that is correct.

Governor Kempthorne called Caralee Lambert and Katie Fite with the OCC. Ms. Caralee Lambert spoke on behalf of the Owyhee Canyonlands Coalition in support of its bid for the lease of lands in Owyhee County.

Ms. Lambert thanked Mr. Bryce Taylor and the Department staff for insuring the participation of all interested groups in the auction bidding process.

Ms. Lambert stated that the issue being discussed involves determining the best and most financial rewarding use of school endowment lands in Idaho. This is not a discussion on the merits of the Air Force training. She stated that she was not at the Land Board meeting to present an argument for or against Air Force range expansion in Idaho. She stated that she was at the meeting to tell the Land Board, as trustees of school endowment lands, why it is in the best interest of Idaho school children to lease the lands to OCC.

Ms. Lambert stated that the goal of the lease bidding on January 22, was to insure that maximum returns are earned from school endowment lands. The Air Force, in bidding a mere \$10.00, did not choose to participate in a competitive auction; nor did it put forth the highest bid. OCC in the bidding process placed the highest value on the lands to be leased. Specifically, OCC outbid by 500 times the Air Force's \$10.00 offer. It is imperative to note that this maximum long-term value is determined by direct and not indirect benefits. The Land Board as the trustees of the school endowment lands may not rely on speculative or indirect benefits in determining the best long-term management of the leased lands. In fact, the U.S. Supreme Court has held impermissible substitute considerations such as indirect benefits in place of actual returns to the school endowment lands. This is the case even when the intention is to benefit schools in the state generally. She stated that the Land Board's discretion is limited by the constitutional duty. Endowment lands cannot be leased in order to support state interests, no matter how well intentioned.

In closing, Ms. Lambert stated that it was important to note that the situation is very different from the grazing context that the Land Board has addressed before. In the past, the Land Board has rejected high bids, but those past high bids differ from OCC's bid in the present case for a number of reasons. Among these are that the high bids in the past may have been inconsistent with surrounding uses. Such bids lacked an adequate management plan or perhaps a larger economic return from the higher bids was less than those from lower competing bids. Regardless, that is not the case here. OCC's bid and management proposal will maximize the long-term direct financial return to the school land endowment from these state leases.

Ms. Katie Fite is a Board Member of the committee for Idaho's High Desert, which is a member organization of the OCC. She stated that OCC has set forth a detailed plan for management of the trust lands such that the lands will retain their maximum value in the long-term. She stated the details of this plan.

Ms. Fite stated that the Air Force's RMP does not commit to clean-up spills and hazardous materials. The Air Force's RMP fails to specify actions which will be taken to avoid harm to wildlife species. The Air Force's RMP fails to provide information on specific military activity that will occur on leased lands. The Air Force's RMP does not commit to restoration of the lands when military use ceases. The Air Force's RMP does not provide adequate monitoring.

Ms. Fite stated that there are public safety and liability concerns associated with the Air Forces planned use of threat emitters and high-level lasers on state lands. Ms. Fite showed the Land Board photos of the Grasmere radar facility. In 1982 the BLM granted the Air Force a right-of-way to park a mobile emitter at this site. Use was extended for 25 years. Ms. Fite stated that from 1993 to present, the Air Force has proven to be a less than optimal steward of the lands. Acknowledging this, the BLM has issued a notice of default to the Air Force. In 1998, Air Force contractors also damaged BLM lands when pounding the first ETI stakes into the ground. Survey crews traveled off road unnecessarily and without authorization have disturbed public land during critical periods for nesting birds such as sage grouse. She provided documentation of this occurrence.

Ms. Fite said that OCC placed the highest bid at the lease auction and the award of the lease to OCC will result in the maximum long-term direct financial return for Idaho's school children. OCC's bid and resource management plan demonstrates a sincerity and commitment to mitigation and monitoring. OCC will lease the land for 25 years with renewal occurring every 10 years. OCC's use is compatible with current uses. There is no negative effect to livestock grazing from OCC's proposed land use. She stated that OCC's low-impact use would result in no physical disturbance to these state lands. The land will be left in as good or better condition as it is today. OCC will work to improve the ecological conditions and will monitor to abate environmental harm. OCC's proposal offers a pro-active noxious weed plan.

Attorney General Lance stated that he was having some difficulty ascertaining what type of organization OCC is. Is it a corporation? Ms. Fite stated that there were 32-33 different organizations involved. It is an unincorporated association. Attorney General Lance asked if it was registered anywhere? Ms. Fite stated that there was no requirement for registration. Ms. Lambert pointed out to the Land Board that the group comprises conservationists, hunters, and professional outfitters. It is not strictly an environmental organization. Attorney General Lance said his point was that if OCC were granted the lease for 25 years, who would be sued in 25 years for a lease violation. Ms. Fite stated that it would be governed by the Idaho Act applying to unincorporated associations. Attorney General stated OCC doesn't have officers, it is not incorporated and it is just an affiliation to raise money – is that accurate? Ms. Lambert stated that OCC is a coalition of over 30 – in fact 33 today – organizations dedicated to preserving this land. Within this organization is some public education groups. There are local high school volunteers that will be doing the monitoring. OCC has national organizations backing as well as both regional and local. Ms. Lambert stated that there is no reason to believe in 25 years this organization would not be around. She said she believed that there will be no reason to sue in 25 years.

Attorney General Lance asked Ms. Lambert if her work was pro bono. She stated that was correct.

Attorney General Lance referred to a newsletter (exhibit 11) that starts out "Help fund the auction to stop the Air Force from leasing school endowment lands for a bombing range." What interest does OCC have in this land other than the fact of stopping the Air Force? Ms. Fite stated that was covered in their resource management plan where specific monitoring is discussed.

Attorney General Lance stated that the obligation of the Land Board is to enhance the return to the endowed institutions over the long-term, not just on a case by case basis. Ms. Lambert reinforced her statement that the constitution states direct returns, it doesn't relate to indirect returns such as Colonel Richey testified to. The Air Force will continue to produce an influx of funding for school children. She said what was being talked about is 960 – roughly – acres that will be monitored in a compatible way with what the Air Force is already doing. Ms. Lambert said according to the constitution, as she reads it, the Land Board is not permitted to look at the indirect \$30 million input of the Air Force that they will be building into this.

Attorney General Lance stated that the Air Force has an annual renewable lease that the endowment fund is getting \$6200 a year for. He stated that these 960 acres are important to the overall operation of that particular lease, which has been in effect since 1962. Conceivable, if this is an important part of that overall operation, we could lose the lease on Saylor Creek.

Secretary of State Cenarrusa asked Ms. Lambert and Ms. Fite if they have any military experience or training. He said that if the Air Force considers or does discontinue that operation, what would OCC monitor. Ms. Fite said they would monitor what it states in their resource management plan – soil erosion, wildlife, vegetation, and noxious weeds.

Secretary of State Cenarrusa said he may not be a lawyer, but he did understand the Admissions Act. It gives the power to the Land Board and to the state to rent state lands under such laws as prescribed by the legislature. As stated in 58-310 says the state Land Board can reject any and all bids. Ms. Lambert pointed out that the Idaho Constitution does control. In the constitution it states that the lands will be managed for the sole purpose of maximizing long-term income (direct) for trust beneficiaries.

Attorney General Lance stated that Ms. Lambert signed the lease application on behalf of the OCC. How were you given authority to do this on their behalf. Ms. Lambert stated that Ms. Johnson, Director of the OCC, did this. Attorney General Lance asked how she was selected. Ms. Lambert stated she did not know and would have to ask her.

State Controller Williams said he appreciated the brief filed by OCC. He stated that he liked the idea of a public/private partnership. This is very important for our country. He asked what was unique about the property that would require OCC to have those specific parcels. He suggested that the state lease OCC other property in the area. Ms. Fite said that on the EIS, these parcels are on higher or more prominent points. He asked if something comparable could be found, would OCC accept it. Ms. Fite said she would have to consult the members, however, it would have to be at a different price because it would be a different property. Ms. Lambert said she did not feel at liberty to discuss this. Ms. Fite said she could say they would be interested.



State Controller Williams said it may well be that these are compatible and might be able to be structured.

State Controller Williams quoted some information from an e-mail – author, Idaho Watersheds Project. It says OCC is fighting to stop the proposed expansion. Another part states OCC has been provided a unique opportunity to expand the public lands debate. State Controller Williams stated that he gets the feeling that – we have these state lands that were given to us for a purpose – and all at once we are involved in a major public policy debate about the use of these lands, with a lot of other factors. He asked Ms. Lambert and Ms. Fite, if OCC did not get the lease, but lease conditions put certain things in about public involvement and monitoring, would this be an adequate alternative to what OCC proposed? Ms. Fite said OCC's position is pretty well set out.

Secretary of State Cenarrusa asked Mr. Taylor if the Department has a site picked out that would be satisfactory for OCC's operation. Mr. Taylor said he could not speak for the coalition, but it appeared to the Department that the state's half-section that borders the fence would be a pretty nice site to set up baseline data. It is just outside the fence, so it is contiguous and adjacent. Secretary of State Cenarrusa asked the coalition if they would be willing to pursue this and study the site mentioned. Ms. Lambert stated that OCC had a strong interest in any mitigation activities including the ones discussed.

Governor Kempthorne introduced Mr. Dewey Bills and reminded him of the 5-minute limit. Mr. Bills said he was an Idaho native and was also an experienced pilot. He stated that he had flown many practice missions over the Saylor Creek gunnery range. He said that he felt he understood how important it is for the Air Force to have a training range of the kind they are proposing.

He said he thought the "big picture" needed to be looked at insofar as our national security is concerned -insofar as the defense of our country. He stated that he felt the opposition that is being experienced, in his mind, could be termed as obstructionist to the Air Force. Therefore, they are obstructionists to our federal government. They are not in tune, in concert, with protecting our freedoms. The future of our school children will come to be naught if we don't protect our freedoms at this time.

Mr. Bills said those airmen at Mountain Home Air Force Base put their lives on the line every day of the year. These training missions are for them to gain additional practice and skill. He said that \$5,000 is a drop in the bucket to the "big picture". Mr. Bills said he would be willing to donate \$6,000 – he was out of town during the auction. We need to protect our country and we need to assist and cooperate with the Air Force. We can't let a handful of obstructionists to our federal government, parading under the umbrella of environmentalists, cause us to go backwards. The education of our school children is important, but also their future freedoms are important.

Governor Kempthorne informed the Land Board that this completed the presentation by staff and interested parties.

Attorney General Lance stated that he met Ms. Johnson, Treasurer for OCC and asked her how much money OCC had in the bank. Ms. Johnson indicated to him that there was \$500. Ms. Johnson stated to the Land Board that she was holding several checks for this purpose if OCC

is presented the lease. She also stated that OCC would be happy to post a bond as suggested in the Idaho code if necessary.

Attorney General Lance said he felt the Land Board was mindful of their duty to maximize the return to the endowed institutions. He said that was noted in *Barber Lumber Co. v. Gifford*, we are to act in a manner as a man of good business sense and judgement would act in regard to his own personal affairs. He said applying this standard to the two present bids, he stated he is of the firm opinion that the OCC bid must be rejected, even though it has offered to pay a premium of \$4,990.

The Attorney General's reasons are as follows:

1. The only reason we are even here today is because of the Air Force's desire to build a training range. In the absence of such a proposal, these lands would simply be managed as they have been in the past and that is for grazing purposes. Thus the enhanced value of these lands is directly attributable to the United States Air Force proposal.
2. Secondly, if the bid were awarded to OCC, it could frustrate this proposal and thereby defeat the very basis for the present market. Indeed, the Board has no assurance that the OCC would continue to lease these lands at the bid amount if the training range proposal is withdrawn, as a result of the awarding of this bid to the OCC, and indeed, the OCC proposal contains an annual opt out provision.
3. Moreover, the avowed purpose of the OCC is to oppose the development of the training range as reflected in exhibit #11 and their fund-raising solicitations. Thus the OCC intends to defeat the very market that provides for the current enhanced revenues from these lands themselves.
4. Finally, the Board has no way of insuring that OCC could carry forward with its commitment. The OCC has no history of leasing state lands and its entire funding is dependent upon contributions from private and charitable groups. In the event of default on the lease, who is the Board to seek redress from? As the court in *Barber Lumber Co.* observed, the Board has a right to know who the persons are that are making the bid. In order to guard the interest of the beneficiaries, the Board must be able to concur that the people it is dealing with are financially able to respond in damages resulting to the state from its failure to carry out the contracts.

In this regard, we know that the United States Air Force is going to invest several million dollars in the area and will likely be present in this area for at least 25 years. This insures a long-term market that results in higher return to the endowed institutions. In contrast, we have no assurance that the OCC will be present, or be willing to pay the enhanced value offered by the United States Air Force.

In short, the Board has the right to consider the character, reputation and ability of the parties to carry out its contracts. In this case, like *Barber Lumber Co.*, the balance weighs in favor of the United States Air Force, which has a long history of fulfilling its obligation to the state of Idaho.

We are here today, not because we have two business interests who are truly competing for a lease of state lands, rather, the sole reason we are here is because OCC and the United States Air Force disagree on a matter of social policy. While I respect each person's right to advocate the respect of positions, it is fundamentally wrong to make the Land Board and the state lands a pawn in this social policy debate.

We also have a further consideration. We have an annually renewable lease that's been in effect since 1962 dealing with Saylor Creek. Based on the testimony that was received, it's clear that this 960 acres enhances the value of that lease and should the Air Force decide not to renew that lease, we are going to imperil the endowed funds by \$6,200 annually. It is the obligation of the Land Board to ensure that we maximize the long-term return to the endowed institutions and the school children in the state of Idaho.

The Attorney General also pointed out that the United States Air Force, under this system, obviously was ham strung. There is no provision under United States code or the funding requirements to enter into this type of bidding process without the prior appropriations authority. He stated that, it seemed to him, each time the Land Board is dealing with the federal agency they can give us their proposal in terms of how much they are willing to pay. As long as we have to go to a competitive bid, they are unable, basically to bid because the appropriation has not been made for that bidding process.

Attorney General Lance made a motion to reject the premium bid of OCC and award the lease to the United States Air Force. Secretary of State Cenarrusa seconded the motion.

State Controller made some remarks. He said that one of the witnesses stated that the Constitution, Article 9, Section 8 said that the sole purpose of the funds had to be for the designated beneficiaries. He said it does not state sole purpose if you read the exact words of the constitution. He stated it is talking about the maximum long-term return to the institutions that has to be the primary focus. He stated that he felt there were other responsibilities inferred. If you go to the Code – Section 58-310 – says that the Land Board, in leases such as this, can reject any and all bids made at the auction sale for certain reasons – and goes on to say “for any other reason, which in the judgement of the State Board of Land Commissioners, justified the rejection of such bids.” He asked if there was something that justifies rejection of those bids. He said he felt there was. Even though there has been a lot of testimony about economics, which is a factor, the justification is as the Attorney General has pointed out, there is an existing facility 18 miles to the north. This proposal enhances that facility and really secures the long-term benefit to the endowment by the increase or sustained rental income from that property – in addition to the new rental income.

State Controller Williams said the issue is - have we abused our discretion. He stated that he did not think so, because of looking at the impact on other lands. We have to remember that the federal government gave these lands to us. This was originally federal property.

State Controller Williams said he felt the Air Force should be encouraged to work with this group on monitoring. He stated that he was prepared to vote to reject the bid of OCC, but asked that it be seriously considered by the Air Force to include in their proposals, public involvement from Idaho.

Secretary of State Cenarrusa said he felt as long as the Land Board is not arbitrary, it can proceed and vote in favor of this motion. He stated that he felt the Land Board was well within its discretion to vote yes on this motion.

Attorney General Lance said he was of the opinion that if the monitoring stations were outside of the fence that we are discussing, the Air Force would have no objections. He stated that he intended to vote in favor of the proposal of the Air Force.

Governor Kempthorne commended the Land Board members for the points that were brought out. The motion carried on a vote of 4-0 with Superintendent Howard being absent.

Governor Kempthorne thanked all of those who made presentations on this issue.

Ms. Lambert stated that OCC would like to request that the Air Force post a bond for the lease of these lands as provided for under Idaho Code 58-309.

Secretary of State Cenarrusa asked the OCC if they were interested in monitoring noxious weeds throughout the state of Idaho and see if they can be eradicated. Ms. Lambert said she would take this back to the OCC, but felt they were planning on doing this regardless.

**2. Request to approve the sale of 15.12 acres of property owned by the Idaho Department of Fish and Game located in Nez Perce County – Sweetwater Springs Fish Hatchery Site, presented by Don McNarie, Real Estate Specialist**

Director Hamilton stated that the request to approve, under the Surplus Property Act, some 15 acres of land owned by the Fish and Game department has been deferred. The Bonneville Power Authority, which was going to be a bidder for this property, has indicated that they want try to do some additional work on their tax supported entity status.

Director Hamilton said the Department intends to bring this issue back to the February Land Board meeting. Governor Kempthorne stated that the Land Board would honor this request.

Governor Kempthorne suggested that the Department be a little bit judicious as to how full each monthly agenda gets. If an agenda is full, move an item to another month. Director Hamilton stated that the Land Board representatives have an opportunity at the briefing meeting to assist in the monthly agenda.

**3. Endowment Fund Investment Legislation, presented by Stanley F. Hamilton, Director, Department of Lands**

Director Hamilton informed the Land Board that this agenda item would be presented by Clive Strong, Division Chief, Natural Resources Division.

Mr. Strong said that the implementation team on the Endowment Task Force met last week and have looked over the legislation to see about early implementation. What would be required to allow the shifting of assets from the current limitations that are imposed by the constitution, would be an amendment to last year's bill that takes affect in the year 2000. We would have to put effective dates on Sections 38 and 39. This will be taken to legislative counsel and request that a bill be drafted to make Sections 38 and 39 effective upon passage by the legislature. That will free up the Endowment Board to go forward to diversify its investments and allow a large return to the assets.

Governor Kempthorne asked if by doing this, the effective date is usually the first of the fiscal year. In this legislation, does it make sense to put an emergency clause regarding this which could set the implementation date earlier? Mr. Strong said that was the recommendation.

State Controller Williams said this meeting was really beneficial. He stated that this is a good interim step because it starts the phase-in. He stated that the Endowment Investment Fund Board will be at a Land Board meeting in the next couple of months to provide a report to the Land Board.

Governor Kempthorne asked what's the quorum where we being to work through the questions that are before this entity. State Controller Williams stated there might be a sub-committee of the Land Board to start by making recommendations. He said there might be a working group of people from each staff. He brought out that there was a lot of talent – such as Robert Maynard and Doug Dorn, both of whom have done an incredible amount of work on this. He said they were available to help and advise, however they are not interested in being the point people.

Attorney General Lance said he agreed with the Controller. He thought a working group would be effective. He stated that each of the respective staffs have a lot to offer rather than a sub-committee of the Land Board. A working group could work their way through this and would probably be most efficient. Governor Kempthorne asked if all members of the Land Board were represented on the working group. State Controller Williams said at the last meeting, all members were represented.

Mr. Strong said that the general thought of the group was the most important element to the implementation of the endowment reform is to establish an investment strategy plan. That is going to require input from each of the Board members as to philosophical views about investment and how that plan should go forward. Once that dialogue has occurred, then the implementation team can go back and develop a plan that implements those ideas and bring them back to the Land Board for consideration.

The general direction of the committee right now is the idea of having a briefing with the Land Board to inform them of the critical issues are that input is needed for. The committee will continue developing a plan and also continue coming back to the Land Board for key policy input. The committee does not see the Land Board as being able to do the implementation itself. This will have to occur through some sort of working group. There is also a general sense that an organizer is needed. Their duty would be to make sure the implementation schedule moves forward. This is being discussed with the Department.

Governor Kempthorne asked if these briefings would take place at a regular Land Board meeting. Director Hamilton said the Department is looking at a special Board meeting that would allow the Land Board and the Endowment Fund Investment Board to be briefed on that subject. This meeting will be a public meeting and the Land Board can take an action if they so desire.

Governor Kempthorne said that he was intent that this issue continue to move forward. He felt that legislature would go along with the idea of the modification of Sections 38 and 39. He stressed that he wanted to make sure that the Land Board is ready to do its part.

Governor Kempthorne asked Director Hamilton and Mr. Strong if any action was required. Mr. Strong said no – that the direction was clear and would go ahead with the legislation.

#### **4. Draft Legislation, presented by Stanley F. Hamilton, Director, Department of Lands**

Director Hamilton stated that there are three items of legislation that the Department is discussing taking to the legislature this year.

- A. Land Exchanges – Similar Lands - Proposed bill would amend Section 58-138, Idaho Code, to clarify the board's authority to exchange state lands for other lands of equal or greater value independent of their highest and best use.
- B. Long Term Leases – Add Parcels to Statutory List - Proposed bill would amend Section 58-307, Idaho Code, to provide legal descriptions of state endowment lands to be commercially leased; and to make technical corrections.
- C. Trespass Remedy – Trespass on State Lands – Proposed bill would amend Section 6-211, Idaho Code, to provide for damage actions relating to trespass on state lands.

After considerable discussion, the motion was made by Attorney General Lance to approve, in block, with the exception that we add political sub-divisions and school districts as well to Proposed Bill 58-307. State Controller Williams seconded the motion. The motion carried on a vote of 4-0 with Superintendent Howard being absent.

There being no further business to come before the Board, the meeting adjourned at 11:45 a.m.

#### **IDAHO STATE BOARD OF LAND COMMISSIONERS**

/s/ Dirk Kempthorne  
President, State Board of Land Commissioners and  
Governor of the State of Idaho

/s/ Pete T. Cenarrusa  
Pete T. Cenarrusa  
Secretary of State

/s/ Stanley F. Hamilton  
Stanley F. Hamilton  
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the April 13, 1999 regular Land Board meeting.